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# Voluntary Consent of Minors

The Arizona Supreme Court recently reversed a lower court decision in a case involving the admissibility of a blood sample taken from a minor.

The case involved a 16-year-old high school student, "Tyler B.", who arrived late to school and was detained by school officials after a hall monitor smelled marijuana on the student and observed paraphernalia in his vehicle. Per school policy, the sheriff's office was contacted. After being Mirandized, Tyler admitted in the presence of the deputy and several school officials to having smoked marijuana prior to driving to school. The deputy informed Tyler he was under arrest for DUI and other offenses, and left to retrieve a phlebotomy kit from his vehicle. Upon his return, the deputy read Tyler an "implied consent admonition", first verbatim and then in "plain English". Tyler agreed verbally and in writing to have his blood drawn, and the deputy drew two vials of blood from the boy's arm.

After being charged by the State of Arizona with DUI, Tyler moved to suppress evidence of the blood draw on the grounds that his consent had not been voluntary and further, as a minor, he lacked the legal capacity to consent. Finding the blood draw in violation of the *Arizona Parents' Bill of Rights* (A.R.S. § 1-602) and that Tyler's consent had been involuntary, violating his constitutional rights, the juvenile court granted the motion to suppress evidence of the blood draw. The State of Arizona subsequently petitioned for special action relief, and the Court of Appeals, Division Two, reversed the juvenile court's ruling, asserting the juvenile court had abused its discretion. The *Parents' Bill of Rights*, the court opined, did not apply since the deputy was acting within the scope of his duties, and the Fifth Amendment did not apply to Tyler's case because blood was not testimonial evidence. Due to the "statewide importance" of this case, a review by the Supreme Court of Arizona was granted.

Tyler's counsel argued a blood draw is a search subject to the Fourth Amendment and, to be valid, must be obtained either by warrant or voluntary consent. Counsel further argued due to the language in the implied consent warning (specifically the last sentence, which read, "You are, therefore, required to submit to the specified tests") and his limited legal capacity due to his status as a minor, Tyler's consent was involuntary and therefore inadmissible. The State responded that every Arizona motorist gives "implied consent" (A.R. S. § 28-1321) and tests administered under the statute are not subject to a Fourth Amendment analysis; and further, "adult privileges carry adult responsibilities", and minors should not be subject to discretions not afforded adults in assessments of blood draw consent.

After subsequent review of relevant case law, the court ruled a blood draw, even administered under A.R.S. § 28-1321, is a search subject to the constraints of the Fourth Amendment (*Missouri v. Mc Neely*, 133 S. Ct. 1552, 1556 [2013]). In the matter of the voluntariness of the consent, the court explained the "totality of the circumstances" is reviewed, including the suspect's age, intelligence, and length of detention (*Schneckloth v. Bustamante*, 412 U.S. 218 [1973]). The court ultimately concluded that even under Arizona's implied consent statute, an arrestee's consent must be voluntary under the Fourth Amendment to justify a warrantless blood draw, and if the suspect is a juvenile, the minor's age and a parent's presence are relevant factors when assessing whether consent was voluntary. The court reversed the Court of Appeals' decision and remanded the case to the juvenile court for further proceedings.

In his concurring statement, Justice John Pelander acknowledged the difficulty imposed on law enforcement officials when attempting to garner consent from a minor suspect. Quoting Chief Justice Roberts' statement from *McNeely,* he offered, "A police officer reading this Court's opinion would have no idea-no idea-what the Fourth Amendment requires of him, once he decides to obtain a blood sample from, in this case, a juvenile DUI arrestee to ensure that the juvenile's consent is voluntary." Pelander went on to suggest other courses of action, but concluded, "The safest course of action for law enforcement might simply be to obtain search warrants, when reasonable feasible, for obtaining blood samples in DUI investigations."

**This article is for informational purposes only, and should not in any way be construed as legal advice. Any law enforcement agency with questions regarding this case or similar cases should consult its legal department.*